

AMENDED IN SENATE JUNE 30, 2004

AMENDED IN SENATE JUNE 10, 2004

AMENDED IN ASSEMBLY MAY 24, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2396

Introduced by Assembly Member Wiggins

February 19, 2004

An act to amend Section 42889 of, ~~and to add Article 7 (commencing with Section 42860) to Chapter 16 of Part 3 of Division 30 of, the Public Resources Code, relating to solid waste, and by making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Wiggins. ~~Soil erosion control tires: removal~~
Waste tire program.

(1) Existing law, the California Integrated Waste Management Act of 1989, establishes an integrated waste management program administered by the California Integrated Waste Management Board. Existing law requires any person who stores, stockpiles, or accumulates waste tires in a specified manner, to clean up those waste tires or abate the effects thereof, or in the case of threatened pollution or nuisance, as defined, take other necessary remedial action, upon the order of the board. Existing law requires the revenues from the California tire fee that is imposed upon the sale of new tires to be deposited in the California Tire Recycling Management Fund, and requires the board to expend the money in that fund, upon appropriation by the Legislature, for specified purposes, based upon a 5-year plan that the board is

required to adopt to establish goals and priorities for the waste tire program, including specified program elements. Existing law also authorizes a local enforcement agency to issue an administrative order requiring the owner or operator of a solid waste facility to take corrective action.

This bill would define the term “soil erosion control tire” as a waste tire that was placed in a gully, steep slope or riparian system, on or before January 1, 1992, as a tool for soil erosion control on agricultural land, as defined.

The bill would exempt, from specified enforcement provisions of the act, a landowner of agricultural land where a soil erosion control tire site is located, if the landowner submits specified documentation to the board on or before December 31, 2010. The bill would provide for the continuation of the exemption, upon the sale of the property, and would provide for related matters. The bill would authorize the board to waive the exemption if the board determines there is an emergency or that public safety and health are at risk.

The bill would require the board, in issuing any order to, or entering into any agreement with, a landowner, concerning soil erosion control tire cleanup, abatement, and site restoration on agricultural land, to coordinate and consult with the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the Department of Fish and Game, the State Water Resources Control Board, and the county in which the agricultural land is located. The bill would require the order or agreement to be issued or entered into in accordance with the California Environmental Quality Act. The bill would authorize a landowner to submit a written request to the Secretary for Environmental Protection and the Secretary of the Resources Agency or their designees, to meet and agree on coordinated tire cleanup, abatement, and site restoration requirements on or before 60 days after the date the request is received from the landowner, upon specified conditions. The bill would prohibit a state agency from imposing any sanction or penalty upon that landowner with regard to a tire cleanup, abatement, and site restoration, until an agreement is reached. *Existing law authorizes the board, with money appropriated from the fund, to create financial incentives for citizens who report illegal hauling or disposal of waste tires.*

The bill would require the board to provide a grant to a small scale farmer from the California Tire Recycling Management Fund for soil erosion control tire cleanup, abatement, and site restoration costs that

~~exceed \$10,000 authorize the board, instead, to create those financial incentives for a person who reports illegal hauling or disposal of waste tires or used tires, thereby making an appropriation by changing the purpose for which funds currently appropriated to the board may be expended. The bill would also delete an obsolete report requirement relating to tire fires. The bill would also require the moneys in the fund to be expended for financial assistance, including grants, loans, and financial guarantees, to landowners who are not small-scale farmers for soil erosion control tire cleanup and abatement and for restoration costs.~~

~~The bill would require the board to adopt regulations by January 1, 2006, regarding the issuance of the grants, providing financial assistance, and the auditing of funds. The bill would also require the board to issue recommendations by January 1, 2006, regarding future appropriations from the fund.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. The Legislature hereby finds and declares all of~~
- 2 ~~the following:~~
- 3 ~~(a) Beginning in the 1940s, federal and state government~~
- 4 ~~agencies promoted the placement of used automotive tires in~~
- 5 ~~gullies, steep slopes, and riparian systems as a best management~~
- 6 ~~practice for soil erosion control on agricultural land.~~
- 7 ~~(b) Current law classifies any property holding over 500 tires~~
- 8 ~~as an illegal waste site and subjects the property to cleanup and~~
- 9 ~~abatement upon the issuance of an order from the California~~
- 10 ~~Integrated Waste Management Board (board). The lack of an~~
- 11 ~~exemption or permit process for tires placed for soil erosion~~
- 12 ~~control constitutes an unfair retroactive penalty.~~
- 13 ~~(c) The board, the State Water Resources Control Board, and~~
- 14 ~~the Department of Fish and Game have imposed conflicting~~
- 15 ~~requirements and sanctions. For some agricultural properties, this~~
- 16 ~~has contributed to over 10 years in delays for cleanup and~~
- 17 ~~remediation of waste tire sites.~~
- 18 ~~(d) When a farmer's land is classified as an illegal waste site,~~
- 19 ~~the farmer cannot borrow against the property for normal farm~~
- 20 ~~operations or initiate tire cleanup, abatement, and site restoration.~~

~~(c) According to the board, agricultural sites, especially sites in Sonoma County, constitute the largest known stockpiles of tires in the state.~~

~~(f) By statute, no less than six million five hundred thousand dollars (\$6,500,000) from the Tire Recycling Management Fund is required to be spent annually to cleanup, abate, remove, or remediate tire stockpiles throughout the state through 2006. This is the most appropriate mechanism to provide financial assistance to farmers facing cleanup and abatement orders from the board.~~

~~SEC. 2. Article 7 (commencing with Section 42860) is added to Chapter 16 of Part 3 of Division 30 of the Public Resources Code, to read:~~

~~Article 7. Soil Erosion Control Tires~~

~~42860. For purposes of this article, the following definitions shall apply:~~

~~(a) "Agricultural land" has the same meaning as "category of agricultural land" in paragraph (3) of subdivision (b) of Section 65570 of the Government Code.~~

~~(b) "Landowner" means a person who owns agricultural land where soil erosion control tires are located.~~

~~(c) "Soil erosion control tire" means a waste tire that was placed in a gully, steep slope, or riparian system, on or before January 1, 1992, as a tool for soil erosion control on agricultural land.~~

~~(d) "Soil erosion control tire site" means the location of one or more buried or exposed soil erosion control tires located on agricultural land.~~

~~(e) "Small scale farmer" means a landowner who employs less than an average of 50 full or part time employees per month in a calendar year.~~

~~42861. (a) Except as provided in subdivisions (c) and (f), Sections 42808, 42823, 42845, and 45000 do not apply to a landowner of agricultural land where a soil erosion control tire site is located, if the landowner submits all of the following documentation to the board on or before December 31, 2010:~~

~~(1) A survey of the agricultural land detailing the precise locations of the soil erosion control tire sites, the approximate~~

1 number of tires in each site, and an indication of whether the tires
2 are buried.

3 (2) ~~A certification that the tires are fulfilling a soil erosion~~
4 ~~control function by one of the following:~~

5 (A) ~~An engineering geologist, who is certified by the Board for~~
6 ~~Geologists and Geophysicists of the Department of Consumer~~
7 ~~Affairs.~~

8 (B) ~~A geotechnical engineer, who is registered by the Board of~~
9 ~~Registration for Professional Engineers and Land Surveyors of the~~
10 ~~Department of Consumer Affairs.~~

11 (C) ~~A certified soil erosion and sediment control professional~~
12 ~~certified by a state agency or a nonprofit professional organization.~~
13 ~~A nonprofit professional organization may certify a person for the~~
14 ~~purposes of this subparagraph if the certification process meets all~~
15 ~~of the following criteria:~~

16 (1) ~~The person passes a proficiency exam in the principles,~~
17 ~~practices, and laws of erosion and sediment control.~~

18 (2) ~~The person possesses a degree in agricultural, civil, or~~
19 ~~environmental engineering, geology, soil science, or natural~~
20 ~~resource science or management.~~

21 (3) ~~The person possesses a minimum of four years of~~
22 ~~professional level experience in the soil erosion and sediment~~
23 ~~control profession.~~

24 (b) ~~The exemption provided by this section applies only to~~
25 ~~buried or exposed soil erosion control tires that are located on~~
26 ~~specific soil erosion control tire sites on agricultural land.~~

27 (c) ~~A person who purchases land from a landowner who is~~
28 ~~eligible for an exemption pursuant to this section shall also be~~
29 ~~subject to the exemption at the time of sale. The landowner who~~
30 ~~sells the property shall disclose to the purchaser the location of all~~
31 ~~soil erosion control tire sites and the approximate number of soil~~
32 ~~erosion control tires in each location.~~

33 (d) ~~If a landowner is not exempt pursuant to this section, the~~
34 ~~landowner is subject to an order issued by the board pursuant to~~
35 ~~subdivision (a) of Section 42862.~~

36 (e) (1) ~~This section does not apply to a landowner who has~~
37 ~~entered into an agreement of negotiated cost recovery with the~~
38 ~~board on or before December 31, 2004, or is subject to an order of~~
39 ~~cleanup and abatement issued by the board on or before December~~
40 ~~31, 2004.~~

~~(2) Notwithstanding paragraph (1), on and after the date when a landowner subject to paragraph (1) completes the tire cleanup, abatement, and site restoration project subject to the agreement or order, the landowner is eligible to seek an exemption pursuant to this section.~~

~~(f) The board may waive the exemption provided by this section if the board determines there is an emergency or if public safety and health are at risk.~~

~~42862. (a) The board shall issue an order to, or enter into an agreement with, a landowner, concerning soil erosion control tire cleanup, abatement, and site restoration on agricultural land only in coordination and consultation with the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the Department of Fish and Game, the State Water Resources Control Board, and the county in which the agricultural land is located, and the order or agreement shall be issued or entered into in accordance with Division 13 (commencing with Section 21000).~~

~~(b) Subdivision (a) does not apply to a landowner that is exempt pursuant to Section 42861, unless the board waives the exemption pursuant to subdivision (f) of Section 42861, in which case the board may take the action specified in subdivision (a) with regard to the tire cleanup, abatement, and site restoration will proceed as specified in paragraph (a).~~

~~(c) If a state agency issues an order that imposes a requirement upon a landowner with regard to tire cleanup, abatement, and site restoration on agricultural land that conflicts with the requirements of another state agency, the landowner may submit a written request to the Secretary for Environmental Protection and the Secretary of the Resources Agency, or their designees, to meet and agree on coordinated tire cleanup, abatement, and site restoration requirements on or before 60 days after the date the request is received from the landowner.~~

~~(d) If a landowner submits a request pursuant to subdivision (c), notwithstanding any other provision of law, a state agency shall not impose any sanction or penalty upon that landowner with regard to tire cleanup, abatement, and site restoration, until an agreement is reached pursuant to subdivision (c).~~

~~(e) The board shall provide a grant to a small scale farmer, pursuant to an order issued by the board or an agreement entered into with the board in accordance with this section, for all tire~~

1 cleanup, abatement, and restoration costs exceeding ten thousand
2 dollars (\$10,000), in accordance with paragraph (1) of subdivision
3 (l) of Section 42889. The board shall provide the grant in
4 accordance with regulations adopted by the board pursuant to
5 paragraph (1) of subdivision (a) of Section 42863.

6 42863. (a) On or before January 1, 2006, the board shall
7 adopt regulations for both of the following:

8 (1) The issuance of grants to small-scale farmers reimburse for
9 tire removal, abatement, and site restoration costs that exceed ten
10 thousand dollars (\$10,000). The regulations shall specify the costs
11 that the grant funds may reimburse, including regulatory technical
12 assistance costs, corrective action costs, and third-party
13 compensation costs. The regulations shall also include procedures
14 for the submission of joint claims and the submission of separate
15 claims for each occurrence.

16 (2) Providing financial assistance, including any combination
17 of grants, loans, and financial guarantees, to a landowner that is
18 not a small-scale farmer, pursuant to paragraph (2) of subdivision
19 (l) of Section 42899, for the costs of soil erosion control tire
20 removal and abatement and for site restoration. The board shall
21 include in the regulations adopted pursuant to this paragraph the
22 need for financial assistance for the following categories of
23 landowners:

24 (A) A landowner who is a monthly average of more than 50, but
25 less than 101, full-time and part-time employees in the most recent
26 calendar year farmer.

27 (B) A landowner with a monthly average of more than 100, but
28 less than 501, full-time and part-time employees in the most recent
29 calendar year.

30 (C) A landowner with a monthly average of over 500, but less
31 than 1001, full-time and part-time employees in the most recent
32 calendar year.

33 (D) A landowner with a monthly average of over 1000
34 full-time and part-time employees in the most recent calendar year.

35 (3) The establishment of a system to rank soil erosion control
36 tire sites for providing financial assistance pursuant to paragraph
37 (2) of subdivision (l) of Section 42889, according to the following
38 criteria:

39 (A) The degree of likelihood that the response action would not
40 be completed if financial assistance is not provided.

~~(B) The ability of the landowner to obtain private financing absent state intervention.~~

~~(C) The degree of community support for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.~~

~~(D) The potential for the cleanup, abatement, and site restoration to provide additional protection of the public health and safety.~~

~~(E) The economic viability of the project including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary tire cleanup, abatement, and site restoration activities are completed.~~

~~(F) The ability of the landowner to successfully undertake tire cleanup, abatement, and site restoration and repay any state loans or private loans backed by the state.~~

~~(4) A procedure to audit the amount of funds appropriated for tire removal and abatement to determine whether the amount of those funds matches the demand for those funds and procedures for adjusting those amounts.~~

~~(b) On or before January 1, 2006, the board shall issue recommendations regarding both of the following:~~

~~(1) Future appropriations from the Tire Recycling Management Fund, commencing with the 2006-07 fiscal year and the five subsequent fiscal years for tire removal, abatement, and site restoration on agricultural land.~~

~~(2) The recovery of costs from federal funds.~~

~~SEC. 3.~~

SECTION 1. Section 42889 of the Public Resources Code is amended to read:

42889. Funding for the waste tire program shall be appropriated to the board in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the board pursuant to Section 42885.5. The moneys in the fund shall be expended for the payment of refunds under this chapter and for the following purposes:

(a) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

1 (b) To pay the costs of administration associated with
2 collection, making refunds, and auditing revenues in the fund, not
3 to exceed 3 percent of the total revenue deposited in the fund, as
4 provided in subdivision (b) of Section 42885.

5 (c) To pay the costs associated with operating the tire recycling
6 program specified in Article 3 (commencing with Section 42870).

7 (d) To pay the costs associated with the development and
8 enforcement of regulations relating to the storage of waste tires
9 and used tires. The board shall consider designating a city, county,
10 or city and county as the enforcement authority of regulations
11 relating to the storage of waste tires and used tires, as provided in
12 subdivision (c) of Section 42850. If the board designates a local
13 entity for that purpose, the board shall provide sufficient, stable,
14 and noncompetitive funding to that entity for that purpose, based
15 on available resources, as provided in the five-year plan adopted
16 and updated as provided in subdivision (a) of Section 42885.5. The
17 board may consider and create, as appropriate, financial incentives
18 ~~for citizens who report~~ *a person who reports* the illegal hauling or
19 disposal of waste tires *or used tires*, as a means of enhancing local
20 and statewide waste tire and used tire enforcement programs.

21 (e) To pay the costs of cleanup, abatement, removal, or other
22 remedial action related to waste tire stockpiles throughout the
23 state, including all approved costs incurred by other public
24 agencies involved in these activities by contract with the board.
25 Not less than six million five hundred thousand dollars
26 (\$6,500,000) shall be expended by the board during each of the
27 following fiscal years for this purpose: 2001–02 to 2006–07,
28 inclusive.

29 (f) To make studies and conduct research directed at promoting
30 and developing alternatives to the landfill disposal of waste tires.

31 (g) To assist in developing markets and new technologies for
32 used tires and waste tires. The board's expenditure of funds for
33 purposes of this subdivision shall reflect the priorities for waste
34 management practices specified in subdivision (a) of Section
35 40051.

36 (h) To pay the costs associated with implementing and
37 operating a waste tire and used tire hauler program and manifest
38 system pursuant to Chapter 19 (commencing with Section 42950).

39 (i) To pay the costs to create and maintain an emergency
40 reserve, which shall not exceed one million dollars (\$1,000,000).

(j) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of waste tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

~~(k) To pay the costs associated with the preparation of a report by the Office of Environmental Health Hazard Assessment, in consultation with the State Air Resources Board, the Integrated Waste Management Board, and the State Department of Health Services, that includes, at a minimum, the major chemical constituents of smoke from burning tires, the toxicity of those chemicals, and the potential effects on human health from exposure to smoke from the tire fires. The report shall be submitted to the Governor, the Legislature, and the board by December 21, 2001. The cost of preparing this report shall not exceed one hundred fifty thousand dollars (\$150,000).~~

~~(l) (1) To make a grant to a landowner that is a small scale farmer, as defined in subdivision (e) of Section 42860, for costs incurred for soil erosion control tire cleanup, abatement, and site restoration on agricultural land that exceeds ten thousand dollars (\$10,000), in accordance with an order issued pursuant to, or an agreement made in accordance with, Section 42862.~~

~~(2) To provide financial assistance, including any combination of grants, loans, and financial guarantees, to a landowner, as defined in subdivision (b) of Section 42860, that is not a small scale farmer, for soil erosion control tire cleanup, abatement and site restoration on agricultural land.~~